



झारखण्ड गजट

असाधारण अंक

झारखण्ड सरकार द्वारा प्रकाशित

संख्या 459 राँची, मंगलवार 25 भाद्र 1936 (श०)
16 सितम्बर, 2014 (ई०)

मंत्रिमंडल (निर्वाचन) विभाग

अधिसूचना

16 सितम्बर, 2014

संख्या-02-निर्वा०न्या०वाद-16-12/14/06--भारत निर्वाचन आयोग की अधिसूचना संख्या-82/झारखण्ड-रा.स./1/2008/2014 दिनांक-26 अगस्त, 2014 द्वारा निर्वाचन अर्जी सं०-1/2008 में दिए गए झारखण्ड उच्च न्यायालय राँची के तारीख 8 मई, 2014 के आदेश से संबंधित अधिसूचना को राजकीय गजट के असाधारण अंक में प्रकाशनार्थ।

झारखण्ड राज्यपाल के आदेश से,

अभय नंदन अम्बष्ठ,

सरकार के अवर सचिव

भारत निर्वाचन आयोग

अधिसूचना

26 अगस्त, 2014/ भाद्रपद 4, 1936 (शक)

संख्या-82/झारखण्ड-रा.स./1/2008/2014 - लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग झारखण्ड विधान सभा के सदस्यों द्वारा राज्य सभा के लिए एक सदस्य के रूप में श्री परिमल नाथवानी के निर्वाचन पर प्रश्न उठाते हुए श्री किशोर लाल द्वारा दर्ज की गई 2008 की निर्वाचन याचिका सं० 1 पर रांची स्थित उच्च न्यायालय के दिनांक 08 मई, 2014 के आदेश को एतद्वारा प्रकाशित करता है।

IN THE HIGH COURT OF JHARKHAND AT RANCHI

E.P. No. 1 of 2008

Kishor Lal

.....Petitioner

Versus

Sri Parimal Nathwani & Ors.

.....Respondents

Coram: **The Hon'ble Mr. Justice Narendra Nath Tiwari**

For the Petitioner : None

For the Respondents : None

53/08.05.2014

Nobody appears on behalf of the parties nor any step has been taken by them.

This election petition is dismissed for non-prosecution.

Consequent thereto, I.A. Nos. 2345 of 2014 & 2490 of 2014 stand disposed of.

Let a copy of this order be sent to the Election Commission for further needful and sending the order for publication in official gazette.

sd/-

(Narendra Nath Tiwari, J.)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Election Petition No. 01 of 2008

Kishor Lal Petitioner

Versus

1. Sri Parimal Nathwani.

2. Sri R.K. Anand.

3. Sri Jay Prakash Narayan Singh. Respondents

Coram: **THE HON'BLE MR. JUSTICE D.K.SINHA**

For the Petitioner : Mr. Shashak Shekhar Prasad, Advocate.

For the Respondent No. 1 : Mr. Anil Kumar Sinha, Sr. Advocate.

For the Respondent No. 2 : None.

For the Respondent No. 3 : Mr. V.P. Singh, Sr. Advocate.

C.A.V. on 10.06.2011

:

Pronounced on 27.07.2011

D.K.Sinha,J. The petitioner Kishor Lal has brought about the Election Petition under Section 81 of the Representation of the People Act, 1951 calling in question the election of Respondent No.1 Sri Parimal Nathwani in the Rajaya Sabha elected by the members of Jharkhand Legislative Assembly in biennial election held in the month of March, 2008.

The Respondent No.1 Sri Parimal Nathwani and Respondent No.3 Sri Jay Prakash Narayan Singh appeared in this Election Petition by executing Vakalatnama but in spite of notice sent to the Respondent No.2 Shri R.K.Anand and thereafter publication of notice in the daily newspaper "Times of India" in the Delhi Edition, calling him to appear, the Respondent No.2 Shri R.K.Anand did not prefer to enter appearance hence the parties were called upon to suggest issues, accordingly they proposed the issues which were settled on recast. In the meantime, two Interlocutory Applications were filed on behalf of the Respondent No. 1 Shri Parimal Nathwani challenging the maintainability of this Election Petition brought about by the petitioner herein.

I.A.No.1170 of 2010

The Interlocutory Application has been filed by the Respondent No.1 by raising preliminary issue as to the maintainability of the Election Petition filed by the petitioner Kishor Lal. The respondent agitated that the instant Election Petition cannot be heard on merit before deciding the preliminary issue under Order XIV Rule 2 of the Code of Civil Procedure. The issue is that the Election Petition in its present form is barred by limitation. Section 81 of the Representation of People Act, 1951 provides that an Election Petition, calling in question the validity of any election must be filed within 45 days from the date of election of the returned candidate. In the instant case the Respondent No.1 was declared returned candidate by the Returning Officer on 26.03.2008 and this Election Petition was filed by the petitioner on 12.05.2008 i.e. on the 48th day of declaration of the result of the election of the returned candidate, as such, there was delay of 3 days in filing the Election Petition. There is no provision under the R.P.Act,1951 for condonation of delay in the matter of Election Petition and therefore, this petition being barred by limitation is liable to be dismissed in limine.

The Interlocutory Application further contended that the instant Election Petition was also liable to be rejected for non-compliance of the provision of Section 83 (i), 86 (A) and Section 132 of the Representation of People Act, 1951 being mandatory in nature and

that the Election Petition was liable to be rejected for non-compliance of Order VII Rule 11 also.

In reply to the said Interlocutory Petition, the petitioner in his rejoinder dated 30.03.2010 explained that the Election Petition was filed by him within 45 days commencing from 27.03.2008 which was the next date of declaration of the returned candidate. The result was declared on 26.03.2009 as such the date 26.03.2009 was to be excluded for counting of the limitation period. The provision of 45 days within which the Election Petition has to be filed and if the limitation is counted from 27.03.2008, the 45th days fell on 10th May, 2008 the office of the High Court remained closed on that day being the 2nd Saturday and 11th May, 2008 was Sunday therefore, the election petition was filed on the following day i.e. on 12.05.2008, as such, the Election Petition was filed by the petitioner within the period of limitation of 45 days.

The election petitioner further explained that he fully complied with the each and every provision required for filing Election Petition in its true spirit and that there was no provision as such being Section 86A in the Representation of People Act, 1951 therefore raising the issue for its compliance would be redundant. Section 132 of the Act was not relevant as it provide penalty for misconduct at the polling station.

The election petitioner explained further that the averments made in the election petition disclosed specific cause of action enabling him to put his claim for relief. The Respondent No.1 was not specific in the Interlocutory Petition as to which provision of orders VII Rule 11 Code of Civil Procedure was not complied by the election petitioner so as to render the election petition liable to be rejected.

The Respondent No.1 replied that the preliminary objection was raised as to the maintainability of the Election Petition on the ground that Section 81 of the Representation of People Act, 1951 was not complied in presenting the election petition within statutory limitation of 45 days from the date of election of the returned candidate. The election petition was filed on 12.05.2008 as against the result of the election of Rajya Sabha declaring the Respondent No.1 as returned candidate on 26.03.2008 and therefore, the election petition ought to have been filed by 9th of May, 2008. The calculation made by the petitioner was wrong as the counting of 45 days from the date of declaration of the election result i.e. 26.03.2008, 9th May, 2008 being Friday was the last date for filing the election petition whereas election petition was filed with the delay of three days on 12.05.2008 hence barred by limitation and statute does not permit condonation

of delay ,therefore, the election petition was liable to be dismissed for non-compliance of Section 81 of the Representation of People Act, 1951.

I.A.No.3246 of 2010

The Respondent No.1 filed another Interlocutory Application by raising a new issue to be decided as the preliminary issue that election petition was presented by the Counsel of the petitioner on 12.05.2008 and not by the petitioner Kishor Lal himself. The mandate of sub-section (1) of Section 81 of the Representation of People Act, 1951 required the election petition to be presented by the candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the mandatory provision of the Act and in that event the election petition was liable to be dismissed on the ground of improper presentation. The election petitioner did not appear personally to present the Election Petition rather it was presented through his Counsel which was totally in contravention of sub-section (1) of Section 81 of the Representation of People Act, 1951 and therefore, the election petition was liable to be rejected.

In reply to the Interlocutory Application No.3246 the election petitioner explained that it was not a fact that the election petition was filed by his Counsel and not by himself. He was accompanied by his Counsel at the time of filing his election petition and that the petitioner had himself presented the petition to the authorized officer of this Court. The election petitioner had sworn affidavit on 12.05.2008 before the Oath Commissioner of Jharkhand High Court, Ranchi in support of the contents of the election petition which would indicate that election petitioner was present in the High Court and he presented the election petition on 12.05.2008 before the authorized officer of the Registry. After the election petition was filed, the stamp reporter scrutinized and finding it valid forwarded the same to the registry of the High Court under Rule 325 of the Jharkhand High Court Rules and the Joint Registrar on receiving report of the stamp reporter passed the following order;

"12.05.2008 Filed. Put up for admission.

sd/-

Joint Registrar

(List and Computer)

The Court then admitted the Election Petition and directed notices to be issued to the Respondents. These all facts having bearing in the record would indicate irresistible conclusion that the election petition was not contrary to the provisions of Section 81(1) of the Representation of the People Act, 1951.

Heard Mr. Shashak Shekhar Prasad, learned Counsel appearing for the petitioner, Mr. Anil Kumar Sinha, learned Senior Counsel appearing for the Respondent No.1 and Mr. V.P.Singh, learned Senior Counsel for the Respondent No.3. None appeared for the Respondent No.2 Shri R.K.Anand.

Learned Counsel Mr. Shashak Shekhar Prasad submitted for the election petitioner that maintainability of the election petition has been challenged on the grounds that it was barred by limitation not presented by the petitioner himself before the competent officer and that no sufficient cause of action could be explained in the election petition.

The learned Counsel explained that the date of declaration of result shall be excluded for counting the limitation and therefore, limitation started from 27.03.2008 and that 45th day fell on 10.05.2008 being the second Saturday and 11th May, 2008 being the Sunday, hence Election Petition could be filed on 12.05.2008. He further explained that since there was no provision in the Representation of the People Act, 1951 as to how the election petition would be filed on a holiday, hence following the provision of Section 9 & 10 of the General Clauses Act, both the holidays i.e. the Saturday and Sunday were excluded and the petition was filed on the opening on 12.05.2008 (Monday).

As per Section 67A of the Representation of the People Act, 1951, (in short the Act) the date on which candidate is declared by the returning officer under the provisions of Section 53 or Section 66, to be elected to a House of Parliament or of the legislature of a State shall be the date of election of that candidate. In the instant case since the result of the election was announced at about 3 p.m. on 26.03.2008 so this day was excluded for calculation of limitation beginning from 27.03.2008.

In Tarun Prasad Chatterjee V. Dinannath Sharma, reported in A.I.R. 2001 Supreme Court 36, the Apex Court observed,

“However, the contention urged by the learned counsel for the appellant in this case is that even if it is held that Sec. 9 has an application to a petition filed under Sec. 81(1) of the R.P. Act., 1951, it could be applied

only in appropriate cases and is not to be applied universally. The contention of the appellant is that in view of the specific language employed in Sec. 81(1) of the R.P. Act, 1951, the word “within” and “from” used therein would indicate that Sec. 9 has no application. It was also urged that the legislative mandate is that the election petition should be filed within 45 days from the date of election of the returned candidate and not earlier than the said date or after 45 days from the said date. On these premises, it was argued that Sec. 9 has no application in the instant case.”

It was further observed in the said decision by the Apex Court,

“The first day for the period of limitation is required to be excluded for the convenience of the parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to the rescue of such parties to give full forty-five days’ period for filing the election petition. Nevertheless, any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate.”

Advancing his argument, the learned Counsel for the petitioner further submitted that maintainability of the election petition was challenged on the ground of non-compliance of the provision of the Act under Section 83(1), 8(A) 132 and order VII Rule 11 of the Code of Civil Procedure. There was no provision referred to in paragraph No.7 of the Interlocutory Application as Section 86(A) in the Representation of the People Act, 1951. The present Interlocutory Application was filed complying the provisions of section 81, Section 82 and Section 117 of the Representation of the People Act, 1951 and hence the petition was not liable to be dismissed in limine. Section 132 of the Act has got no relevancy as the same dealt with penalty for misconduct at the polling station. Learned Counsel further explained that none of the ingredients envisaged under clause (a) to (d) of Rule 11 of order VII of the Code of Civil Procedure could be attracted in the Election Petition so as to call for its dismissal. The Respondent failed to pin point the allegations in the Election Petition if true did not entitle the petitioner to claim relief based upon detailed cause of action as put in the petition.

The learned Counsel replying to the second issue explained that the Election Petitioner had sworn his affidavit on 12.05.2008 before the Oath Commissioner, Jharkhand High Court,

Ranchi in support of the contention/averment made in the Election Petition and he himself presented the Election Petition before the authorized officer as envisaged under Rule 325 of the High Court of Jharkhand Rules 2001. The allegation as made in the Interlocutory Application by the Respondent No.1 as claimed to be based upon the knowledge of the Respondent No.1 who was not supposed or expected to be present in the High Court Premises, watching the activities of the election petitioner personally, hence liable to be prosecuted for filing false affidavit. There was nothing on the record of the Election Petition on the basis of which the Respondent No.1 would claim that the Election Petition was not presented by the election petitioner himself but by his Counsel and both the Interlocutory Petitions were liable to be dismissed.

Mr. Anil Kumar Sinha, learned Sr. Counsel appearing for the Respondent No.1 submitted that limitation as per Section 81(1) of the Act would start from the date of election of the returned candidate and not from the subsequent day. It was not the case of the petitioner that the result of biennial election of Rajya Sabha was declared late in the night of 26.3.2008 so the date of result would be excluded in calculating the limitation of 45 days.

In *Youaraj Rai and Others Vrs. Chander Bahadur Karki*, reported in (2007) 1 Supreme Court Cases 770, the Apex Court observed.

“The learned Counsel also referred to the relevant provisions of the Act as they originally stood in 1951 and the amended provisions after the Representation of the People (Second Amendment) Act, 1956 (Act 27 of 1956) and the Representation of the People (Amendment) Act, 1961 (Act 14 of 1961). Section 81 of the Act, as it originally stood prior to the Amendment Act, 1956, did not expressly provide period of limitation for filing an election petition. It, however, provided that an election petition calling in question any election could be presented “in such form and within such time as may be prescribed”. The word “prescribed” was defined as “prescribed by the rules made under the Act”. Parliament, however, thought it fit to prescribe the period of limitation. By the Amendment Act, 1956, therefore, it amended Section 81 by expressly providing the period of limitation of forty-five days from the date of election of the “returned candidate”. To avoid any doubt and to make the position explicitly clear as to what should be the date on which a candidate can be said to have been declared elected, Parliament also inserted Section 67-A clarifying that the date on which the candidate is declared elected by the Returning Officer would be the date of election of that candidate.”

The learned Sr. Counsel consistently argued that the Election Petition was not presented by the petitioner himself but by his Counsel before an Officer of the High Court in the Registry, who was not authorized under Rule 325 of the High Court of Jharkhand Rules, 2001 to accept Election Petition. Rule 325 of Jharkhand High Court Rules 2001 deals with presentation of the Election Petition which speaks;-

Rule 325(1) Every Election Petition shall be presented in the Registry of the Court in the same manner as is applicable to the presentation of other cases under these Rules. On the Election Petition being so presented, the Stamp Reporter of the Court shall endorse his report thereon and finding that it conforms to all requirements of law, is in time, properly stamped for the purposes of Court fee etc. and is accompanied by the requisite fee payable, send it to the Registrar General for listing before the Judge who has been assigned by the Chief Justice for this purpose.”

But in the instant case it was admitted by the petitioner that the Election Petition was presented before the Joint Registrar (List and Computer) and not before the Registrar General of the High Court, an authorized officer under the Rule to receive the Election Petition in consonance with the provisions of Section 81(1) of the Representation of the People Act, 1951. In G.V. Sreerama Reddy & Anr. Vrs. Returning Officer & Ors, reorted in 2010 (1) JLJR (S.C.) page 11 the Apex Court observed,

“In view of the endorsement by the Registrar(Judicial) on 7.7.2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub-section (1) of Section 81, election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation. Since, the High Court has correctly dismissed the election petition, the civil appeal fails and the same is dismissed with no order as to costs.”

Learned Sr. Counsel Mr. V.P.Singh appearing on behalf of the Respondent No.3 submitted that he may be permitted to adopt the argument advanced on behalf of the Respondent No.1 which is allowed.

Having regard to the facts and circumstances of the case, argument advanced on behalf of the petitioner as also for the Respondent No.1 by the respective Counsels on the facts of the case and the preliminary issues raised by the Respondent No.1 and replied by the petitioner, I find that the main points which need consideration being the preliminary issues are as to whether or not the election petition as brought about by the petitioner Shri Kishor Lal is time barred as it could not be filed within 45 days of limitation and that the Election Petition was not presented by him but by his Counsel Shashak Shekhar Prasad on 12.05.2008.

In Tarun Prasad Chatterjee V. Dinannath Sharma, reported in A.I.R. 2001 Supreme Court 36, the Apex Court observed that the first day of the period of limitation was required to be excluded for the convenience of the parties and if the declaration of the result was delayed or was done late in the night, the candidate or elector would hardly any time for presentation of the election petition.

In the instant case the averment of the petitioner was that result of biennial election of Rajya Sabha was declared at about 3 p.m. on 26.03.2008 and not late in the night so as to get the advantage of one day for calculation of the limitation beginning from 27.03.2008. In Youaraj Rai and Others Vrs. Chander Bahadur Karki, reported in (2007) 1 Supreme Court Cases 770, the Apex Court had given a contrary view by interpreting the provision of Section 81(1) of the Representation of People Act, 1950 wherein it was held that the Amendment Act, 1956 amended Section 81 by expressly providing the period of limitation of 45 days from the date of election of the returned candidate and to avoid any doubt and to make the position explicitly clear as to what should be the date on which a candidate could be said to have been declared elected, Section 67A was inserted clarifying that the date on which the candidate is declared elected by the Returning Officer would be the date of election of that candidate and that no concession for any day was provided even in view of delayed commencement of the result, may be late in the night. I, therefore, find and observe that if the limitation is calculated from the date of result on 26.03.2008 of the biennial election, 45th day fell on 9th May, 2006 which was Friday and the petitioner did not file the Election Petition within the period of limitation of 45 days but it was filed on 12.05.2008 with the delay of 3 days. As there was no statutory provision for the condonation of delay in filing the Election Petition for whatever may be the reason, the Election Petition is not maintainable under Section 81(1) of the Representation of the People Act, 1951. This issue is decided in favour of the Respondent No.1 and against the petitioner.

The next point which has been raised by the Respondent No.1 is that the Election Petition was not filed by the Election Petitioner himself as it is evident from the first page of the 'cause title' of the Election Petition wherein endorsement was made by the learned Counsel,

"Through

Shashak Shekhar Prasad,

Advocate.

12.05.2008"

The mandate of sub-section(1) of Section 81 of the Representation of People Act, 1951 required that Election Petition is to be presented by the candidate or elected in relation to the election personally to the authorized officer of the Hon'ble High Court and failure to adhere such course would be contrary to the said provisions and in that event election petition is liable to be dismissed on the ground of improper presentation.

Rule 325 of the High Court of Jharkhand Rule, 2001 indicates that it has to be presented in the Registry of the Court and shall be sent to the Registrar General with the endorsement of the Stamp Reporter for its listing before the Judge, who has been assigned by the Chief Justice for this purpose. In this case I find that the Election Petition was presented before the Joint Registrar (List and Computer) on 12.05.2008 without any endorsement made therein that it was filed by the Election Petitioner himself. The next order dated 13.06.2008 indicated that the Election Judge of this Court directed the Election Petition to be put up before him with office note through Registrar General regarding defect No.1 as pointed out and in that manner the Election Petition reached before the Registrar General, who was an Authorized Officer of the Registry to receive Election Petition by the judicial order and not on the presentation of the petition.

In G.V.Sreerama Reddy & Anr Vrs. Returning Officer & Ors., reported in 2010(1) J.L.J.R. page 10 (S.C.), the Supreme Court in Civil Appeal No. 6269 of 2008 decided on 11.08.2009 observed,

“One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented “by” the petitioner himself, so that at the

time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.”

From perusal of the entire order-sheet as well as Election Petition filed on behalf of the petitioner, I find nowhere endorsement either of the Stamp Reporter or of the Joint Registrar or the Registrar General of this Court that the Election Petition was presented by the petitioner himself for preliminary verification that the petition was neither frivolous nor vexatious. I further find from the affidavit of the petitioner sworn supporting the contents of the Election Petition that he himself presented the petition either before the Oath Commissioner or before the Authorized Officer of the Registry under Rule 325 of the High Court of Jharkhand Rule, 2001.

For the reasons stated above, I find that the petitioner in that manner contravened the statutory and mandatory provision of Section 81(1) of the Representation of the People Act, 1951.

In view of the above discussions I find and observe that this Election Petition has been filed neither within the period of limitation of 45 days of the result of the Election of the returned candidate nor it was presented by the petitioner- Kishor Lal himself which amount to contravention of the mandatory provisions of Section 81(1) of the Representation of the People Act, 1951 and therefore, both the issues are decided in favour of the Respondent No.1 and against the petitioner, accordingly, the Election Petition is dismissed since barred by limitation and on improper presentation.

Accordingly, I.A.No.1170 of 2010 and I.A.No.3246 of 2010 are allowed in favour of the Respondent No.1 and hence disposed of.

P.K.S./A.F.R.

[D.K.Sinha,J.]

आदेश से,
के. अजय कुमार,
प्रधान सचिव।

उपरोक्त अधिसूचना का अंग्रेजी में निम्नलिखित अनुवाद झारखण्ड राज्यपाल के प्राधिकार से इसके द्वारा प्रकाशित किया जाता है जो भारतीय संविधान के अनुच्छेद 348 के खण्ड (3) के अधीन अंग्रेजी भाषा में उसका प्राधिकृत पाठ समझा जायगा।

झारखण्ड राज्यपाल के आदेश से,

अभय नन्दन अम्बष्ठ,

सरकार के अवर सचिव।

ELECTION COMMISSION OF INDIA

NOTIFICATION

26th August, 2014/ Bhadrapada 4, 1936 (Saka)

No. 82/JH-CS/1/2008/2014 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 08th May, 2014, of the High Court of Judicature at Ranchi in Election Petition No. 1 of 2008 filed by Sh. Kishor Lal calling in question the election of Sh. Parimal Nathwani as the Member of Council of States from the State of Jharkhand.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

E.P. No. 1 of 2008

- - - -

Kishor Lal

.....Petitioner

Versus

Sri Parimal Nathwani & Ors.

.....Respondents

- - - -

Coram: **The Hon'ble Mr. Justice Narendra Nath Tiwari**

- - - -

For the Petitioner : None

For the Respondents : None

53/08.05.2014

Nobody appears on behalf of the parties nor any step has been taken by them.

This election petition is dismissed for non-prosecution.

Consequent thereto, I.A. Nos. 2345 of 2014 & 2490 of 2014 stand disposed of.

Let a copy of this order be sent to the Election Commission for further needful and sending the order for publication in official gazette.

sd/-

(Narendra Nath Tiwari, J.)

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Election Petition No. 01 of 2008

Kishor Lal Petitioner

Versus

1. Sri Parimal Nathwani.

2. Sri R.K. Anand.

3. Sri Jay Prakash Narayan Singh. Respondents

Coram: **THE HON'BLE MR. JUSTICE D.K.SINHA**

For the Petitioner : Mr. Shashak Shekhar Prasad, Advocate.

For the Respondent No. 1 : Mr. Anil Kumar Sinha, Sr. Advocate.

For the Respondent No. 2 : None.

For the Respondent No. 3 : Mr. V.P. Singh, Sr. Advocate.

C.A.V. on 10.06.2011

:

Pronounced on 27.07.2011

D.K.Sinha,J.

The petitioner Kishor Lal has brought about the Election Petition under Section 81 of the Representation of the People Act, 1951 calling in question the election of Respondent No.1 Sri Parimal Nathwani in the Rajaya Sabha elected by the members of Jharkhand Legislative Assembly in biennial election held in the month of March, 2008.

The Respondent No.1 Sri Parimal Nathwani and Respondent No.3 Sri Jay Prakash Narayan Singh appeared in this Election Petition by executing Vakalatnama but in spite of notice sent to the Respondent No.2 Shri R.K.Anand and thereafter publication of notice in the daily newspaper "Times of India" in the Delhi Edition, calling him to appear, the Respondent No.2 Shri R.K.Anand did not prefer to enter appearance hence the parties were called upon to suggest issues, accordingly they proposed the issues which were settled on recast. In the meantime, two Interlocutory Applications were filed on behalf of the Respondent No. 1 Shri Parimal Nathwani challenging the maintainability of this Election Petition brought about by the petitioner herein.

I.A.No.1170 of 2010

The Interlocutory Application has been filed by the Respondent No.1 by raising preliminary issue as to the maintainability of the Election Petition filed by the petitioner Kishor Lal. The respondent agitated that the instant Election Petition cannot be heard on merit before deciding the preliminary issue under Order XIV Rule 2 of the Code of Civil Procedure. The issue is that the Election Petition in its present form is barred by limitation. Section 81 of the Representation of People Act, 1951 provides that an Election Petition, calling in question the validity of any election must be filed within 45 days from the date of election of the returned candidate. In the instant case the Respondent No.1 was declared returned candidate by the Returning Officer on 26.03.2008 and this Election Petition was filed by the petitioner on 12.05.2008 i.e. on the 48th day of declaration of the result of the election of the returned candidate, as such, there was delay of 3 days in filing

the Election Petition. There is no provision under the R.P.Act,1951 for condonation of delay in the matter of Election Petition and therefore, this petition being barred by limitation is liable to be dismissed in limine.

The Interlocutory Application further contended that the instant Election Petition was also liable to be rejected for non-compliance of the provision of Section 83 (i), 86 (A) and Section 132 of the Representation of People Act, 1951 being mandatory in nature and that the Election Petition was liable to be rejected for non-compliance of Order VII Rule 11 also.

In reply to the said Interlocutory Petition, the petitioner in his rejoinder dated 30.03.2010 explained that the Election Petition was filed by him within 45 days commencing from 27.03.2008 which was the next date of declaration of the returned candidate. The result was declared on 26.03.2009 as such the date 26.03.2009 was to be excluded for counting of the limitation period. The provision of 45 days within which the Election Petition has to be filed and if the limitation is counted from 27.03.2008, the 45th days fell on 10th May, 2008 the office of the High Court remained closed on that day being the 2nd Saturday and 11th May, 2008 was Sunday therefore, the election petition was filed on the following day i.e. on 12.05.2008, as such, the Election Petition was filed by the petitioner within the period of limitation of 45 days.

The election petitioner further explained that he fully complied with the each and every provision required for filing Election Petition in its true spirit and that there was no provision as such being Section 86A in the Representation of People Act, 1951 therefore raising the issue for its compliance would be redundant. Section 132 of the Act was not relevant as it provide penalty for misconduct at the polling station.

The election petitioner explained further that the averments made in the election petition disclosed specific cause of action enabling him to put his claim for relief. The Respondent No.1 was not specific in the Interlocutory Petition as to which provision of orders VII Rule 11 Code of Civil Procedure was not complied by the election petitioner so as to render the election petition liable to be rejected.

The Respondent No.1 replied that the preliminary objection was raised as to the maintainability of the Election Petition on the ground that Section 81 of the Representation of People Act, 1951 was not complied in presenting the election petition within statutory limitation of 45 days from the date of election of the returned candidate. The election petition was filed on

12.05.2008 as against the result of the election of Rajya Sabha declaring the Respondent No.1 as returned candidate on 26.03.2008 and therefore, the election petition ought to have been filed by 9th of May, 2008. The calculation made by the petitioner was wrong as the counting of 45 days from the date of declaration of the election result i.e. 26.03.2008, 9th May, 2008 being Friday was the last date for filing the election petition whereas election petition was filed with the delay of three days on 12.05.2008 hence barred by limitation and statute does not permit condonation of delay ,therefore, the election petition was liable to be dismissed for non-compliance of Section 81 of the Representation of People Act, 1951.

I.A.No.3246 of 2010

The Respondent No.1 filed another Interlocutory Application by raising a new issue to be decided as the preliminary issue that election petition was presented by the Counsel of the petitioner on 12.05.2008 and not by the petitioner Kishor Lal himself. The mandate of sub-section (1) of Section 81 of the Representation of People Act, 1951 required the election petition to be presented by the candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the mandatory provision of the Act and in that event the election petition was liable to be dismissed on the ground of improper presentation. The election petitioner did not appear personally to present the Election Petition rather it was presented through his Counsel which was totally in contravention of sub-section (1) of Section 81 of the Representation of People Act, 1951 and therefore, the election petition was liable to be rejected.

In reply to the Interlocutory Application No.3246 the election petitioner explained that it was not a fact that the election petition was filed by his Counsel and not by himself. He was accompanied by his Counsel at the time of filing his election petition and that the petitioner had himself presented the petition to the authorized officer of this Court. The election petitioner had sworn affidavit on 12.05.2008 before the Oath Commissioner of Jharkhand High Court, Ranchi in support of the contents of the election petition which would indicate that election petitioner was present in the High Court and he presented the election petition on 12.05.2008 before the authorized officer of the Registry. After the election petition was filed, the stamp reporter scrutinized and finding it valid forwarded the same to the registry of the High Court under Rule 325 of the Jharkhand High Court Rules and the Joint Registrar on receiving report of the stamp reporter passed the following order;

"12.05.2008 Filed. Put up for admission.

sd/-

Joint Registrar

(List and Computer)

The Court then admitted the Election Petition and directed notices to be issued to the Respondents. These all facts having bearing in the record would indicate irresistible conclusion that the election petition was not contrary to the provisions of Section 81(1) of the Representation of the People Act, 1951.

Heard Mr. Shashak Shekhar Prasad, learned Counsel appearing for the petitioner, Mr. Anil Kumar Sinha, learned Senior Counsel appearing for the Respondent No.1 and Mr. V.P.Singh, learned Senior Counsel for the Respondent No.3. None appeared for the Respondent No.2 Shri R.K.Anand.

Learned Counsel Mr. Shashak Shekhar Prasad submitted for the election petitioner that maintainability of the election petition has been challenged on the grounds that it was barred by limitation not presented by the petitioner himself before the competent officer and that no sufficient cause of action could be explained in the election petition.

The learned Counsel explained that the date of declaration of result shall be excluded for counting the limitation and therefore, limitation started from 27.03.2008 and that 45th day fell on 10.05.2008 being the second Saturday and 11th May, 2008 being the Sunday, hence Election Petition could be filed on 12.05.2008. He further explained that since there was no provision in the Representation of the People Act, 1951 as to how the election petition would be filed on a holiday, hence following the provision of Section 9 & 10 of the General Clauses Act, both the holidays i.e. the Saturday and Sunday were excluded and the petition was filed on the opening on 12.05.2008 (Monday).

As per Section 67A of the Representation of the People Act, 1951, (in short the Act) the date on which candidate is declared by the returning officer under the provisions of Section 53 or Section 66, to be elected to a House of Parliament or of the legislature of a State shall be the date of election of that candidate. In the instant case since the result of the election was announced at about 3 p.m. on 26.03.2008 so this day was excluded for calculation of limitation beginning from 27.03.2008.

In Tarun Prasad Chatterjee V. Dinannath Sharma, reported in A.I.R. 2001 Supreme Court 36, the Apex Court observed,

“However, the contention urged by the learned counsel for the appellant in this case is that even if it is held that Sec. 9 has an application to a petition filed under Sec. 81(1) of the R.P. Act, 1951, it could be applied only in appropriate cases and is not to be applied universally. The contention of the appellant is that in view of the specific language employed in Sec. 81(1) of the R.P. Act, 1951, the word “within” and “from” used therein would indicate that Sec. 9 has no application. It was also urged that the legislative mandate is that the election petition should be filed within 45 days from the date of election of the returned candidate and not earlier than the said date or after 45 days fo the said date. On these premises, it was argued that Sec. 9 has no application in the instant case.”

It was further observed in the said decision by the Apex Court,

“The first day for the period of limitation is required to be excluded for the convenience of the parties and if the declaration of the result is delayed or is done late in the night, the candidate or elector would hardly get any time for presentation of the election petition. Law comes to the rescue of such parties to give full forty-five days’ period for filing the election petition. Nevertheless, any petition presented on the date of election of the returned candidate would be certainly within the period of limitation as it is a presentation on the date of election of the returned candidate.”

Advancing his argument, the learned Counsel for the petitioner further submitted that maintainability of the election petition was challenged on the ground of non-compliance of the provision of the Act under Section 83(1), 8(A) 132 and order VII Rule 11 of the Code of Civil Procedure. There was no provision referred to in paragraph No.7 of the Interlocutory Application as Section 86(A) in the Representation of the People Act, 1951. The present Interlocutory Application was filed complying the provisions of section 81, Section 82 and Section 117 of the Representation of the People Act, 1951 and hence the petition was not liable to be dismissed in limine. Section 132 of the Act has got no relevancy as the same dealt with penalty for misconduct at the polling station. Learned Counsel further explained that none of the ingredients envisaged under clause (a) to (d) of Rule 11 of order VII of the Code of Civil Procedure could be

attracted in the Election Petition so as to call for its dismissal. The Respondent failed to pin point the allegations in the Election Petition if true did not entitle the petitioner to claim relief based upon detailed cause of action as put in the petition.

The learned Counsel replying to the second issue explained that the Election Petitioner had sworn his affidavit on 12.05.2008 before the Oath Commissioner, Jharkhand High Court, Ranchi in support of the contention/averment made in the Election Petition and he himself presented the Election Petition before the authorized officer as envisaged under Rule 325 of the High Court of Jharkhand Rules 2001. The allegation as made in the Interlocutory Application by the Respondent No.1 as claimed to be based upon the knowledge of the Respondent No.1 who was not supposed or expected to be present in the High Court Premises, watching the activities of the election petitioner personally, hence liable to be prosecuted for filing false affidavit. There was nothing on the record of the Election Petition on the basis of which the Respondent No.1 would claim that the Election Petition was not presented by the election petitioner himself but by his Counsel and both the Interlocutory Petitions were liable to be dismissed.

Mr. Anil Kumar Sinha, learned Sr. Counsel appearing for the Respondent No.1 submitted that limitation as per Section 81(1) of the Act would start from the date of election of the returned candidate and not from the subsequent day. It was not the case of the petitioner that the result of biennial election of Rajya Sabha was declared late in the night of 26.3.2008 so the date of result would be excluded in calculating the limitation of 45 days.

In *Youaraj Rai and Others Vrs. Chander Bahadur Karki*, reported in (2007) 1 Supreme Court Cases 770, the Apex Court observed.

“The learned Counsel also referred to the relevant provisions of the Act as they originally stood in 1951 and the amended provisions after the Representation of the People (Second Amendment) Act, 1956 (Act 27 of 1956) and the Representation of the People (Amendment) Act, 1961 (Act 14 of 1961). Section 81 of the Act, as it originally stood prior to the Amendment Act, 1956, did not expressly provide period of limitation for filing an election petition. It, however, provided that an election petition calling in question any election could be presented “in such form and within such time as may be prescribed”. The word “prescribed” was defined as “prescribed by the rules made under the Act”. Parliament, however, thought it fit to prescribe the period of limitation. By the Amendment Act, 1956, therefore, it amended Section 81 by expressly providing the period of limitation of forty-five days from the date of election of the “returned candidate”. To avoid any doubt and to make the position explicitly clear as

to what should be the date on which a candidate can be said to have been declared elected, Parliament also inserted Section 67-A clarifying that the date on which the candidate is declared elected by the Returning Officer would be the date of election of that candidate.”

The learned Sr. Counsel consistently argued that the Election Petition was not presented by the petitioner himself but by his Counsel before an Officer of the High Court in the Registry, who was not authorized under Rule 325 of the High Court of Jharkhand Rules, 2001 to accept Election Petition. Rule 325 of Jharkhand High Court Rules 2001 deals with presentation of the Election Petition which speaks;-

Rule 325(1) Every Election Petition shall be presented in the Registry of the Court in the same manner as is applicable to the presentation of other cases under these Rules. On the Election Petition being so presented, the Stamp Reporter of the Court shall endorse his report thereon and finding that it conforms to all requirements of law, is in time, properly stamped for the purposes of Court fee etc. and is accompanied by the requisite fee payable, send it to the Registrar General for listing before the Judge who has been assigned by the Chief Justice for this purpose.”

But in the instant case it was admitted by the petitioner that the Election Petition was presented before the Joint Registrar (List and Computer) and not before the Registrar General of the High Court, an authorized officer under the Rule to receive the Election Petition in consonance with the provisions of Section 81(1) of the Representation of the People Act, 1951. In G.V. Sreerama Reddy & Anr. Vrs. Returning Officer & Ors, reported in 2010 (1) JLJR (S.C.) page 11 the Apex Court observed,

“In view of the endorsement by the Registrar(Judicial) on 7.7.2008 that the election petition was presented only by an advocate and not by the election petitioners, we accept the reasoning of the High Court in dismissing the election petition. We further hold that as per sub-section (1) of Section 81, election petition is to be presented by any candidate or elector relating to the election personally to the authorized officer of the High Court and failure to adhere such course would be contrary to the said provision and in that event the election petition is liable to be dismissed on the ground of improper presentation. Since, the High Court has correctly dismissed the

election petition, the civil appeal fails and the same is dismissed with no order as to costs.”

Learned Sr. Counsel Mr. V.P.Singh appearing on behalf of the Respondent No.3 submitted that he may be permitted to adopt the argument advanced on behalf of the Respondent No.1 which is allowed.

Having regard to the facts and circumstances of the case, argument advanced on behalf of the petitioner as also for the Respondent No.1 by the respective Counsels on the facts of the case and the preliminary issues raised by the Respondent No.1 and replied by the petitioner, I find that the main points which need consideration being the preliminary issues are as to whether or not the election petition as brought about by the petitioner Shri Kishor Lal is time barred as it could not be filed within 45 days of limitation and that the Election Petition was not presented by him but by his Counsel Shashak Shekhar Prasad on 12.05.2008.

In Tarun Prasad Chatterjee V. Dinannath Sharma, reported in A.I.R. 2001 Supreme Court 36, the Apex Court observed that the first day of the period of limitation was required to be excluded for the convenience of the parties and if the declaration of the result was delayed or was done late in the night, the candidate or elector would hardly any time for presentation of the election petition.

In the instant case the averment of the petitioner was that result of biennial election of Rajya Sabha was declared at about 3 p.m. on 26.03.2008 and not late in the night so as to get the advantage of one day for calculation of the limitation beginning from 27.03.2008. In Youaraj Rai and Others Vrs. Chander Bahadur Karki, reported in (2007) 1 Supreme Court Cases 770, the Apex Court had given a contrary view by interpreting the provision of Section 81(1) of the Representation of People Act, 1950 wherein it was held that the Amendment Act, 1956 amended Section 81 by expressly providing the period of limitation of 45 days from the date of election of the returned candidate and to avoid any doubt and to make the position explicitly clear as to what should be the date on which a candidate could be said to have been declared elected, Section 67A was inserted clarifying that the date on which the candidate is declared elected by the Returning Officer would be the date of election of that candidate and that no concession for any day was provided even in view of delayed commencement of the result, may be late in the night. I, therefore, find and observe that if the limitation is calculated from the date of result on 26.03.2008 of the biennial election, 45th day fell on 9th May, 2006 which was Friday and the

petitioner did not file the Election Petition within the period of limitation of 45 days but it was filed on 12.05.2008 with the delay of 3 days. As there was no statutory provision for the condonation of delay in filing the Election Petition for whatever may be the reason, the Election Petition is not maintainable under Section 81(1) of the Representation of the People Act, 1951. This issue is decided in favour of the Respondent No.1 and against the petitioner.

The next point which has been raised by the Respondent No.1 is that the Election Petition was not filed by the Election Petitioner himself as it is evident from the first page of the 'cause title' of the Election Petition wherein endorsement was made by the learned Counsel,

"Through

Shashak Shekhar Prasad,

Advocate.

12.05.2008"

The mandate of sub-section(1) of Section 81 of the Representation of People Act, 1951 required that Election Petition is to be presented by the candidate or elected in relation to the election personally to the authorized officer of the Hon'ble High Court and failure to adhere such course would be contrary to the said provisions and in that event election petition is liable to be dismissed on the ground of improper presentation.

Rule 325 of the High Court of Jharkhand Rule, 2001 indicates that it has to be presented in the Registry of the Court and shall be sent to the Registrar General with the endorsement of the Stamp Reporter for its listing before the Judge, who has been assigned by the Chief Justice for this purpose. In this case I find that the Election Petition was presented before the Joint Registrar (List and Computer) on 12.05.2008 without any endorsement made therein that it was filed by the Election Petitioner himself. The next order dated 13.06.2008 indicated that the Election Judge of this Court directed the Election Petition to be put up before him with office note through Registrar General regarding defect No.1 as pointed out and in that manner the Election Petition reached before the Registrar General, who was an Authorized Officer of the Registry to receive Election Petition by the judicial order and not on the presentation of the petition.

In G.V.Sreerama Reddy & Anr Vrs. Returning Officer & Ors., reported in 2010(1) J.L.J.R. page 10 (S.C.), the Supreme Court in Civil Appeal No. 6269 of 2008 decided on 11.08.2009 observed,

“One can discern the reason why the petition is required to be presented by the petitioner personally. An election petition is a serious matter with a variety of consequences. Since such a petition may lead to the vitiation of a democratic process, any procedure provided by an election statute must be read strictly. Therefore, the Legislature has provided that the petition must be presented “by” the petitioner himself, so that at the time of presentation, the High Court may make preliminary verification which ensure that the petition is neither frivolous nor vexatious.”

From perusal of the entire order-sheet as well as Election Petition filed on behalf of the petitioner, I find nowhere endorsement either of the Stamp Reporter or of the Joint Registrar or the Registrar General of this Court that the Election Petition was presented by the petitioner himself for preliminary verification that the petition was neither frivolous nor vexatious. I further find from the affidavit of the petitioner sworn supporting the contents of the Election Petition that he himself presented the petition either before the Oath Commissioner or before the Authorized Officer of the Registry under Rule 325 of the High Court of Jharkhand Rule, 2001.

For the reasons stated above, I find that the petitioner in that manner contravened the statutory and mandatory provision of Section 81(1) of the Representation of the People Act, 1951.

In view of the above discussions I find and observe that this Election Petition has been filed neither within the period of limitation of 45 days of the result of the Election of the returned candidate nor it was presented by the petitioner- Kishor Lal himself which amount to contravention of the mandatory provisions of Section 81(1) of the Representation of the People Act, 1951 and therefore, both the issues are decided in favour of the Respondent No.1 and against the petitioner, accordingly, the Election Petition is dismissed since barred by limitation and on improper presentation.

Accordingly, I.A.No.1170 of 2010 and I.A.No.3246 of 2010 are allowed in favour of the Respondent No.1 and hence disposed of.

P.K.S./A.F.R.

[D.K.Sinha,J.]

By order,

K. AJAYA KUMAR,
PRINCIPAL SECRETARY.
